

**Department of State  
Division of Publications**

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Sequence Number: 01-15-09  
Rule ID(s): 3859  
File Date: 01/15/09  
Effective Date: 03/31/09

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Air Pollution Control
<b>Contact Person:</b>	Jeryl W. Stewart
<b>Address:</b>	9 <sup>th</sup> Floor L & C Annex 401 Church Street Nashville, Tennessee
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**Revision Type (check all that apply):**

- ☒ Amendment  
☐ New  
☐ Repeal

**Rule(s) Revised** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables.)

Chapter Number	Chapter Title
1200-03-11	Hazardous Air Contaminants
Rule Number	Rule Title
1200-03-11-.04	Mercury

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1200-03-11  
Hazardous Air Contaminants

Amendment

Paragraph (1) of rule 1200-03-11-.04 Hazardous Air Contaminants Mercury is amended by adding the following sentence (Any facility subject to the provisions of 40 CFR 63, Subpart IIIII – National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants is no subject to this rule.) at the end of the current text so that, as amended, paragraph (1) shall read:

- (1) Applicability. The provisions of this Rule are applicable to those air contaminant sources which process mercury ore to recover mercury, use mercury chlor-alkali cells to produce chlorine gas and alkali metal hydroxide, and incinerate or dry wastewater treatment plant sludge. Any facility subject to the provisions of 40 CFR 63, Subpart IIIII – National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor-Alkali Plants is not subject to this rule.

Authority: T.C.A. § 68-201-105.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	X				
Tracy R. Carter	X				
Ngee-Sing Chong				X	
Wayne T. Davis	X				
Mary English				X	
Stephen R. Gossett	X				
Helen Hennon				X	
Richard M. Holland	X				
Joe C. McKinnon	X				
Donald Mull	X				
Dale Swafford	X				
Greer Tidwell, Jr.				X	
Larry Waters	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board (board/commission/ other authority) on 07/11/2007 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/30/07

Notice published in the Tennessee Administrative Register on: 05/15/07

Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/07

Date: Nov. 14, 2008

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: November 14, 2008

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 23, 2009

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

*RE Cooper Jr*

Robert E. Cooper, Jr.  
Attorney General and Reporter

*1-9-09*

Date

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Filed with the Department of State on:

*1/15/09*

Effective on:

*3/3/09*

*Tre Hargett*

Tre Hargett  
Secretary of State

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## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which shall be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: The commenter urged the Board to make the state rules consistent with the current federal rules.

Response: The Board agrees.

Comment: The commenter observed that the Division incorporated into the public depository copies of a part of 40 CFR 63, Subpart IIIII – National Emission Standards for Hazardous Air Pollutants: Mercury Emissions from Mercury Cell Chlor – Alkali Plants, specifically 40 CFR 63.8182 which contains language identical to that proposed.

Response: No response required.

**Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

The administrative record for this rule shows that there is no basis to perform a Regulatory Flexibility Analysis or to provide an Economic Impact Statement under requirements of T.C.A. §§ 4-5-401 et seq. No small business as defined in T.C.A. § 4-5-102 (less than or equal to 50 full-time employees) is affected by this rule.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This rule revision serves to update the language in the current state rule consistent with the current language in a new federal regulation that regulates the same type of facility.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Chapter 1200-03-11 is the state equivalent of the federal regulations found in Title 40, Part 61 of the Code of Federal Regulations.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

This rule revision will affect facilities that have mercury cell chlor – Alkali plants. There is currently only one in the State of Tennessee (Olin Chlor Alkali Products). The Tennessee Chamber of Commerce and Industry supported the rule amendment.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

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Division of Air Pollution Control  
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- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alan M. Leiserson  
Legal Services Director  
Department of Environment and Conservation

- (H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel  
Department of Environment and Conservation  
20<sup>th</sup> Floor L & C Tower  
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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Department is not aware of any.